**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.476 OF 2007
IN
CRIMINAL APPEAL NO.968 OF 1998

Ananda Mahadev Gadve ...Applicant.

**Versus**

The State of Maharashtra ...Respondent.

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Mr.Aniket Vagal h/f. Smt.Anjali Patil, Adv. for Applicant.
Mr.Rajesh More, APP, for State.

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**CORAM : SMT.V.K.TAHILRAMANI,J.**

**DATED : 22nd February, 2007.**

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant had preferred an application for recalling of PW-1. PW-1 came to be examined on 6.2.2007. Prior to that the matter was adjourned at the request of the defence Advocate. The applicant was represented by Advocate Mrs.Anjali Patil and Advocate Mr.Aniket Vagal. In the presence of defence Advocate Mr.Vagal, the

evidence of PW-1 complainant came to be recorded. The learned Advocate Mr.Vagal declined to cross-examine even though an opportunity was granted to him. Thereafter on the very same day, Advocate Mrs.Anjali Patil preferred an application for recall of PW-1. She has stated that as she was before the High Court, she was not able to conduct the cross of PW-1, hence PW-1 may be recalled.

3. The learned Sessions Judge has observed that the application was preferred as if none was present for the accused when the evidence of PW-1 was recorded. The learned Sessions Judge has observed that Advocate Mr.Vagal was very much present when the evidence of PW-1 (complainant) was recorded, however, he declined to cross-examine the witness even though an opportunity was granted to him. In view of these facts the learned Sessions Judge rejected the application for recall of witness.

4. Obviously, preferring an application as if none was present for the accused when the evidence of PW-1 was recorded, was totally wrong on the part of the learned Advocate for the accused and

hence the learned Sessions Judge was justified in imposing cost of Rs.500/-.

5. However, looking to the fact that the applicant is a poor person, in the interest of justice the application for recall of witness is allowed because I am of the opinion that on account of the conduct of both the Advocates for the accused, the applicant should not be made to suffer. Hence application for recalling of witness is allowed on costs of Rs.1000/- being paid to the State. The costs to be borne by the learned Advocate for the applicant.

6. Application is disposed of accordingly.

**(SMT.V.K.TAHILRAMANI,J.)**